

REMARKS/ARGUMENTS

This paper is filed responsive to the Office Action mailed June 10, 2009. Claims 1 to 3, 5 to 18, and 34 and 35 are pending in this application. Claims 1 to 3, 5, 9 to 15 and 36 stand rejected under 35 U.S.C. §102(b) as being anticipated by Russin (U.S. 5,807,276). NOTE: Claim 36 was previously canceled in last response. Claims 16 to 18 stand objected to as being dependent upon a rejected base claims. Applicants traverse the rejections and request reconsideration and reexamination of the application.

The Examiner did not provide a specific rejection of claims 6 to 8, 34 and 35, but merely indicated them as rejected on the cover sheet of the Action. Applicants will assume that the Examiner meant them to fall under the single rejection which was applied to most of the other claims.

The Examiner has rejected claims 1 to 3, 5 and 9 to 15 under 35 U.S.C. §102(b) over Russin. Russin teaches a biopsy device having a tubular body and a sliding scalpel blade which extends from and is oriented normal to the body. The present invention of independent claims 1 and 34 comprises a bone notcher having an elongate body and a bone cutting edge which is spaced apart from and not normal to the body. This differs from the device of Russin. Further, Russin does not disclose a bone cutting edge, but merely a scalpel suitable for cutting soft tissue. With the exception of claim 35 the remaining rejected claims depend from claim 1 and thus also patentably define over Russin. Claim 35 provides that the bone cutting element is substantially wedge-shaped such that a width of the cutting element increases in a proximal to distal direction. The blade of Russin does not increase in width in that direction.

Applicants acknowledge with appreciation the indication that claims 16 to 18 contain allowable subject matter.

Please charge any deficiency or credit any overpayment to Deposit Account No. 10-0750/MIT5027USNP/ACF.

Docket No. MIT5027USNP
Serial No. 10/708,467

Applicants submit that the application is presently in condition for allowance and request favorable reconsideration and early notice of allowance. If it would speed prosecution, the Examiner is encouraged to contact the undersigned attorney by telephone.

Respectfully submitted,

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Dated: September 10, 2009